

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

A. Statutory Authority

3. Possession of Child Sexually Abusive Material

Insert the following text before subsection (B) in the March 2003 update to pages 132–133:

Determining whether images stored in temporary Internet or deleted files on the defendant's computer could establish his knowing possession of child sexually abusive material was unnecessary where the complainant and the defendant's wife testified that the "defendant look[ed] at images of adolescents on his computer screen for extended periods of time, including during the course of engaging in sexual acts [and] defendant's friend testified that defendant had emailed him pictures of nude children." *People v Girard*, ___ Mich App ___, ___ (2005).

CHAPTER 3

Other Related Offenses

3.11 Dissemination of Sexually Explicit Matter to Minors

A. Statutory Authority—Disseminating and Exhibiting

2. Statutory Exceptions

Insert the following text immediately before subsection (B) in the January 2004 update to page 144:

Effective December 1, 2005, by 2005 PA 108, the statutory provisions concerning sexually explicit matter, MCL 722.671 *et seq.*, are specifically contained in Part I, to which the title “Sexually Explicit Matter” was added.*

2005 PA 108 also added a new section, MCL 722.682a, containing exceptions to the statutory provisions found in Part I, Sexually Explicit Matter. The new section, effective December 1, 2005, states:

“Sec. 12a. This part does not apply to any of the following:

“(a) A medium of communication to the extent regulated by the federal communications commission.

“(b) An internet service provider or computer network service provider that is not selling the sexually explicit matter being communicated but that provides the medium for communication of the matter. As used in this section, ‘internet service provider’ means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet or a computer network.

“(c) A person providing a subscription multichannel video service under terms of service that require the subscriber to meet both of the following conditions:

“(i) The subscriber is not less than 18 years of age at the time of the subscription.

“(ii) The subscriber proves that he or she is not less than 18 years of age through the use of a credit card, through the presentation of government-issued identification, or by other reasonable means of verifying the subscriber’s age.”

*Also effective December 1, 2005, 2005 PA 108 added a new Part II, “Ultra-Violent Explicit Video Games,” MCL 722.685 *et seq.*